IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 46 OF 2002

Shri Basavaraj Yamanappa Hannur,
C/o. A. S. Kori,
L/M Office of
Sub Divisional Officer (Phones)
Margao, Goa. ..... Petitioner

V e r s u s

1. The Telecom District Manager,
   Department of Telecommunication,
   Panaji Goa.

2. The Sub Divisional Officer (Phones)
   Margao, Goa.

3. Industrial Tribunal,
   Government of Goa, having office
   at Junta House, First Lift,
   2nd floor, Panaji, Goa.
   (Registered Addresses) ..... Respondents

Mr. P. A. Kholkar, Advocate for the Petitioner.

Mr. J. Vaz, Advocate for Respondent nos. 1 and 2.

CORAM: J. N. PATEL, J.

DATE: 8th December, 2006.

ORAL JUDGMENT

Heard the learned Counsel for the parties.

2. The issue which is required to be decided by this Court is whether the Presiding Officer of the Industrial Tribunal was justified in rejecting the claim of the petitioner solely on the ground that he is not entitled to any relief on account of undue delay and latches which has not been satisfactorily explained by the Workman?

3. In nutshell, the facts can be summed up as under:-

The petitioner joined as Casual labourer with the respondent no.2, w.e.f. 01.10.1985 and continuously worked up to 30.11.1986, till his name was removed from the list of casual mazdoor by an Order dated 20.11.1986 and the petitioner was informed not to come to work w.e.f. 01.12.1986. It is not disputed that at the time of discontinuing, the petitioner who was employed as a casual mazdoor, the respondent no.2 did not follow the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947. Aggrieved by this termination of service, the petitioner raised the dispute and that is how this case was referred for adjudication to the Industrial Tribunal. The question for adjudication which was referred by the Tribunal was,

> "Whether the action of the Department of Telecom District Manager, Goa, and SDO Phones, Margao, Goa, in stopping from services to Shri Basavaraj Yamanappa Hannur, ex-casual mazdoor, with effect from 30.11.1986, is proper, legal and justified?"

The Tribunal after examining the case on merits by permitting the parties to lead evidence, found that the petitioner has proved that the respondent did not comply with the provisions of Section 25 of the Industrial Disputes Act, 1947 and hence the termination of the services by the respondent is illegal and gave a finding to the reference that the termination of service of the petitioner with effect from 30.11.1986, is illegal, improper and unjustified. Thereafter, the Tribunal examined the other aspect of the dispute i.e. whether the petitioner is entitled to the benefit accruing from such illegal, improper and unjustified termination and held that though the normal rule is that when the order on termination is held to be legal and unjustified, the workman should be reinstated in service with full back wages unless there are circumstances which do not warrant reinstatement or full back wages but felt that the petitioner is not entitled for any consequential relief of the nature of reinstatement and back wages on the ground of delay and latches by placing reliance on various decisions of the Supreme Court on the point, i.e. the decisions rendered in the case of ***Nedumgadi Bank Ltd. v. K. P. Madhavankutti & Ors. (2000 (1) SLR 630), Ratan Chandra Sammanta & Others v. Union of India & Others (AIR 1993 S.C. 2276), Inder Singh & Sons Ltd., v. Their Workmen (1961 II LLJ 89)*** and that of Bombay High Court in the case of ***State of Maharashtra v. Dnyaneshwar Rukmaji Aher & anr. (1998 I CLR 522)***.

4. The Tribunal then proceeded to examine as to whether the petitioner/workman has been able to satisfactorily explain the undue delay and latches in raising the dispute and found that the services of the petitioner were terminated

from 30.11.1986, he made the representation to the employer for the first time by letter dated 13.12.1990 i.e. only after a period of four years and the explanation offered for such delay was that he has been repeatedly visiting the office of the S.D.O.(P), Margao, making verbal requests to reinstate him, which has not been accepted by the Tribunal on the ground that it is difficult to believe that a person would approach the employer again and again continuously for a period of four years making a request to reinstatement inspite of knowing that the employer is not listening to his request and, therefore, he ought to have raised the dispute immediately on realizing that the employer was not interested in reinstating him. The Tribunal has also referred to the stand taken by the petitioner that in the month of December, 1990, the Union told him that the Telecom Department on the basis of the decision given by the Supreme Court, has framed a scheme known as "*Casual Labourers (Grant of Temporary Status and Regularisation) Scheme*" and, on the basis of the said scheme, the Department vide Circular dated 07.06.1990, have issued guidelines to deal with the matter of temporary status to the eligible casual mazdoors and that the Union told him to make a representation to the S.D.O. (P), Margao, for reinstatement, and this is how, he made his representation on 13.12.1999. This has been considered by the Tribunal as admission on the part of the workman that till then, he had no intention to raise any dispute regarding termination of his service and, therefore, his explanation that he has been going repeatedly to the office of his employer with a request for reinstatement is nothing but an afterthought and made with ulterior motive of covering the long period of delay and, therefore, dismissed the reference to the extent of granting consequential reliefs having not accepted the explanation which was

offered by the petitioner.

5. The petitioner being aggrieved due to denial of the consequential reliefs which ought to have followed in normal Court, has challenged the Order passed by the Tribunal before this Court.

6. The learned Counsel for the petitioner submitted that the Tribunal has taken a hyper technical view in denying him the right to reinstatement with back wages merely on the ground that the petitioner has not explained satisfactorily the undue delay of four years. It is submitted that it has resulted in grave injustice being caused to the petitioner who has otherwise successfully proved that his services came to be terminated without complying with the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947. The learned Counsel appearing for the petitioner submitted that the Tribunal ought to have accepted the explanation offered by the petitioner in the given facts and circumstances as it is not expected of a worker to have immediately resorted to legal remedies available to him for want of knowledge and that such remedy is available and further, if he would have taken such steps, that would have adversely affected his case for consideration by the respondent-employer for offering the job and, therefore, it was not justified on the part of the Tribunal to have drawn adverse inference against the petitioner and deny him the relief to which he was otherwise entitled in the light of the findings arrived at by the Tribunal in his favour.

7. It is further submitted that even accepting that the delay is for a period of four years, it was not so fatal so as to deny the relief sought for by the petitioner. On the other hand, persons who were similarly placed as the petitioners, have availed of the benefit of the scheme which came to be framed by the respondent-employer, pursuant to the directions issued by the Supreme Court in the case of absorption of casual labourers in the very Department of the respondent in the decision in the case of ***Ram Gopal & Ors. v. Union of India & Ors. (WP (C) No. 1280 of 1989)***, along with other connected petitions, (copy of which is annexed at Exhibit D), wherein the Supreme Court has given clear directives to the Department of Telecom to take back all casual mazdoors, who have been discharged after 30.03.1985 and the case of the petitioner would be covered by communication no. 269/93/STN/II dated 17.12.1993, which has been relied upon by the petitioner before the Tribunal and placed on record as exhibit P-7. It is submitted that the petitioner was engaged as casual mazdoor by the respondent no.2 during the period from 31.03.1985 to 22.06.1988 and had completed more than 240 days but for his legal termination/discontinuation from service and from employment, he would have been entitled for the benefit of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989.

8. The learned Counsel for the petitioner has placed reliance to the decisions rendered by the Supreme Court in the case of ***S. M. Nilajkar & Ors. v. Telecom District Manager, Karnataka ((2003) 4 S.C.C. 27)*** and placed reliance particular on para 17 of the reported Judgment in which it is held as under:

"Merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. IT is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, the delay in the present case has not been so culpable as to disentitle the appellants to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but the High Court was factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the Judgment in Daily Rated Casual Labour v. Union of India, (1988) 1 SCC 122, the Department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.01.1990, they were refused to be accommodated in the Scheme. On 28.12.1990, they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. It is therefore not possible to accept the submission of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants."

It is therefore contended that the impugned Order denying relief to the petitioner deserves to be quashed and set aside and the respondent be directed to reinstate the petitioner with back wages.

9. Mr. Vaz, the learned Counsel appearing for the respondent submitted that the petitioner was engaged as a casual workman and it could be determined at any given time when the same were not required. It is submitted that there was an irregular practice in the Department of engaging casual workmen even without there being any work of casual nature available in the Department and it is only when this fact came to the notice of the respondent/Department that services of all the casual workers came to be discontinued and no right is vested in them to claim reinstatement with back wages in the nature that the respondent himself was casual workman. Mr. Vaz submitted that the Circular which is relied upon by the petitioner and placed before the Tribunal, exhibit P-7, itself clarifies the stand of the respondent and that the Department having noticed that the engagement of casual mazdoors by the Officers were not approved and therefore this Circular was to the effect to bring to the notice of all Head of Circles concerning the Class II Officers, that such engagement of casual mazdoors should be viewed very seriously and if any official of the Department engages casual mazdoor, the amount paid to such casual mazdoor towards the wages should be regular from the mazdoor who have have been casual mazdoor in violation of this Circular. It is further submitted that apart from delay and latches, the whole controversy has been covered in the case rendered in ***Secretary,***

State of Karnataka & Ors. v. Umadevi (3) and Ors. ((2006) 4 S.C.C. 1), wherein Five Judge Bench of the Supreme Court have held that absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment on issuance of directions by Court is not permissible. The Supreme Court has also made it clear that the injustice to consider in a given situation, cannot be accepted as it appears to be unqualified and this tendency on the part of the persons who get employed, without the following of a regular procedure or even through the back door or on daily wages, have been approaching the Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to posts concerned, came to be dehors as it was held that the very nature of the appointment do not acquire any right in them and, therefore, it is submitted that the petitioner would not be entitled to the relief of reinstatement with back wages and, therefore, the petition deserves to be dismissed.

10. It is not in dispute that the petitioner was engaged as a casual mazdoor, came to be terminated without following the procedure and in compliance of provisions of Section 25-F of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes Act reads as under:

> "25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until -
>
> (a) The workman has been given one month's notice in

> writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

In the present case, it is not in dispute that the petitioner has completed 240 days of his engagement as a casual worker nor his services have been terminated but he has been removed from service by way of retrenchment without following the conditions enumerated in Section 25-F of the Industrial Disputes Act, 1947, which are condition precedent to retrenchment of workers and, on this count, the Tribunal has also held in favour of the petitioner which has not been challenged either by preferring any separate Writ Petition or by taking such a plea in response to the petition filed by the workman. With due respect to the learned Counsel appearing for the respondent, this Court is of the view that the case of the petitioner would not be covered by the decision of the Supreme Court in ***Umadevi's*** case (supra). This Court would not like to make any observation in reference to the contentions made by the learned Counsel for the petitioner that the petitioner was otherwise eligible for being considered for

grant of temporary status and as per the Scheme of 1989 for the reason that it is not in issue before this Court. This Court finds that the Tribunal erred in arriving at a finding that the delay of four years in raising a dispute by approaching the authority, is of such a nature that the relief to the petitioner can be denied on the ground of delay and latches. Admittedly, there is no time period prescribed for a workman under the Industrial Disputes Act, 1947, to raise a dispute but then the decisions on the issue which has been also reflected in the Order of the Tribunal makes it clear that a workman should approach and raise a dispute "within" reasonable time. What should be the reasonable time would depend on peculiar facts and circumstances of each case and as rightly contended by the learned Counsel for the petitioner in the case of ***S. M. Nilajkar & Ors.*** (supra), which was almost an identical case on facts and relating to the establishment of the respondent in Karnataka, clearly tilts the balance in favour of the petitioner. Though the Tribunal has outrightly rejected the explanation offered by the petitioner of having repeatedly approached his employer i.e. respondent for getting employed, the respondent had refused to accede to his request and it is only when he was made aware of the scheme for regularization by the Union, that he raised the dispute and was held to be not bonafide. Except for holding so, the Tribunal has failed to appreciate that there was no reason to disbelieve the petitioner as it is but natural that the petitioner was engaged as a casual workman and he could not have immediately taken recourse to legal remedy so as to annoy the employer. In the facts and circumstances, it cannot be said that four years period, which has lapsed between his discontinuation as a casual mazdoor and raising a dispute was fatal to the case of the petitioner so as to deny him relief for which he was otherwise found entitled on

merits.

11. This Court finds that the petitioner is entitled for the consequential relief of atleast reinstatement but not back wages, which could have been denied to him, for the delay caused in approaching the Court. It is after a passage of twenty years from his discontinuation as a casual labourer that this Court has been able to take up the petition for final hearing and disposal and, therefore, it is not expected of the petitioner to have sat idle without being gainfully employed, and for this reason, this Court is not inclined to grant any back wages to the petitioner. Therefore, the petition is partly allowed. The impugned order of the Tribunal is quashed and set aside. Respondents are directed to forthwith reinstate the petitioner as casual workman without back wages. Rule made absolute accordingly, with costs.

J. N. PATEL, J.

arp/*